

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: KEURIG GREEN MOUNTAIN SINGLE-SERVE COFFEE ANTITRUST LITIGATION

This Document Relates to:

BJ'S WHOLESALE CLUB, INC.,

Plaintiff,

-against-

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

AND

WINN-DIXIE STORES, INC.; AND
BI-LO HOLDING, LLC,

Plaintiff,

-against-

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

Case No. 1:14-md-02542-VSB

[Related Case Nos. 1:21-CV-7493,
1:21-CV-7504]

**STIPULATION AND ORDER
REGARDING PLAINTIFFS'
MOTION TO EXCLUDE THE
PROPOSED TESTIMONY OF
KEVIN MURPHY, PH.D.**

WHEREAS, Keurig Green Mountain, Inc. ("Keurig") retained Dr. Kevin Murphy to provide expert opinions in the BJ's and Winn-Dixie actions and also in the actions filed by the other plaintiffs in this multidistrict litigation;

WHEREAS, on August 18, 2021 other Plaintiffs in the multidistrict litigation filed a Motion to Exclude The Proposed Testimony of Kevin Murphy, Ph.D. (the "Prior Murphy Daubert") seeking to exclude certain opinions advanced by Dr. Murphy commonly in their actions, which Dr. Murphy also advances in the BJ's and Winn-Dixie actions;

WHEREAS, in order to be efficient for the Court, BJ's Wholesale Club, Inc. ("BJ's") and Winn-Dixie Stores, Inc. and Bi-Lo Holding LLC ("Winn-Dixie") seek to join the Prior Murphy Daubert, and Keurig seeks to adopt its prior opposition;

WHEREAS, BJ's and Winn-Dixie do not intend for their joinder of the Prior Murphy Daubert to expand the claims beyond the claims asserted in their complaints or to limit or expand the scope of any disclosed expert testimony as presented by Dr. Murphy or any other expert;

WHEREAS, this stipulation shall not be construed as an agreement by Keurig that BJ's or Winn-Dixie has asserted all claims brought by other plaintiffs in this multidistrict litigation, or that BJ's or Winn-Dixie is entitled to any relief; and

WHEREAS, based on the foregoing, Keurig does not oppose BJ's and Winn-Dixie's request to join the Prior Murphy Daubert subject to the terms enumerated in this stipulation;

IT IS HEREBY AGREED, by and among the undersigned:

1. BJ's adopts and relies on the Prior Murphy Daubert, at ECF Nos. 1475 and 1615, and will not seek to exclude Dr. Murphy's testimony on any other basis. This adoption of the Prior Murphy *Daubert* shall serve as BJ's motion to exclude Dr. Murphy's testimony, otherwise scheduled to be filed on June 30, 2023 (ECF No. 2052), and BJ's need not make any further filing on this subject.

2. Keurig adopts and relies on its Opposition to the Prior Murphy Daubert, ECF No. 1550, as its Opposition to BJ's Motion, and Keurig need not make any further filing on this subject.

3. Winn-Dixie adopts and relies on the Prior Murphy Daubert, at ECF Nos. 1475 and 1615, will not seek to exclude Dr. Murphy's testimony on any other basis, with the exception that Winn-Dixie intends to move to exclude certain analysis offered by Dr. Murphy in rebuttal to the regression analysis offered by Winn-Dixie's proposed damages expert, Dr. Asher.

Winn-Dixie will file this limited Murphy *Daubert* motion regarding Winn-Dixie-specific issues by June 30, 2023, the existing deadline for all *Daubert* motions. ECF No. 2052.

4. Keurig will adopt and rely on its Opposition to the Prior Murphy Daubert, ECF No. 1550, as its Opposition to the Prior Murphy Daubert in the *Winn-Dixie* action. Keurig will oppose Winn-Dixie's limited Murphy *Daubert* motion on the Winn-Dixie-specific issues by August 11, 2023, the existing deadline under the case schedule for all *Daubert* oppositions. ECF No. 2052.

5. Within 21 days of the Court's ruling on the Prior Murphy Daubert, Keurig, BJ's, and Winn-Dixie will meet and confer and submit a joint status update and proposed order(s) regarding how the Court's ruling affects the claims asserted by BJ's and Winn-Dixie.

6. This stipulation shall not be construed to limit or expand the claims asserted by BJ's or Winn-Dixie or the defenses asserted by Keurig or to limit or expand the scope of any evidentiary *in limine* motions at trial.

Dated: June 28, 2023

COUNSEL FOR PLAINTIFF
BJ'S WHOLESALE CLUB, INC.:

**CADWALADER, WICKERSHAM
& TAFT LLP**

By: /s/ Philip J. Iovieno (with permission)

Philip J. Iovieno
200 Liberty Street
New York, NY 10281
Telephone: (212) 504-6000
philip.iovieno@cwt.com

Gregory W. Langsdale

Kristen J. McAhren
700 Sixth Street, NW
Washington, DC 20001
Telephone: (202) 862-2200
kristen.mcahren@cwt.com
greg.langsdale@cwt.com

COUNSEL FOR PLAINTIFFS WINN-DIXIE
STORES, INC. AND BI-LO HOLDING, LLC

AHERN AND ASSOCIATES, P.C.

By: /s/ Patrick J. Ahern (with permission)

Patrick J. Ahern
Willoughby Tower
8 South Michigan Avenue, Suite 3600
Chicago, Illinois 60603
Telephone: (312) 404-3760
patrick.ahern@ahernandassociatespc.com

COUNSEL FOR DEFENDANT
KEURIG GREEN MOUNTAIN, INC.:

**CLEARY GOTTLIEB STEEN &
HAMILTON LLP**

By: /s/ Carl Lawrence Malm
Leah Brannon
Carl Lawrence Malm
2112 Pennsylvania Avenue, NW
Washington, D.C. 20037
Telephone: (202) 974-1500
lbrannon@cgsh.com
lmalm@cgsh.com

**BUCHANAN INGERSOLL &
ROONEY PC**

Wendelynne J. Newton
Mackenzie A. Baird
Union Trust Building
501 Grant Street, Suite 200
Pittsburgh, PA 15219-4413
Telephone: (412) 562-8800
wendelynne.newton@bipc.com
mackenzie.baird@bipc.com

SO ORDERED.

Dated: June 29, 2023
New York, New York



Vernon S. Broderick
United States District Judge